IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/10/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.14594 of 1995

D. Issac Jepakumar Petitioner

-Vs-

1. Government of Tamil Nadu
rep. by its Commissioner and
Secretary to Government
Housing and Urban Development
Department, Fort St.George
Madras 9.

2.TamilNadu Housing Board
rep. by the Chairman
cum Managing Director
Nandanam, Madras 35. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, as stated therein.

For Petitioner : Ms.R.Vaigai

For Respondents : Mr.R.Vijayakumar
Government Advocate for R1.
Mr.D.Veerasekaran for R2.

:ORDER
This writ petition has been filed for the issuance of a writ of certiorarified mandamus, to quash the letter No.5395/HB.1(2)94-14 dated 0 7.02.1994 issued by the first respondent after calling for the concerned records from him and consequently direct the respondent to revise the petitioner's pay in the post of Community Officer and Community Development Officer and subsequent promotions on par with the scale of Rs.1820-3200, 2200-4000 (Selection Grade) and Rs.2,200-4000 respectively, from the dates they were revised in CMDA with all attendant benefit of arrears of salary and allowances, etc.

2. In the affidavit filed along with the writ petition, it is stated as follows:
The petitioner was appointed on 12.10.1978 as Social Worker which is

now known as "Community Officer" in the Chennai Metropolitan Development Authority, temporarily on a consolidated pay of Rs.500/-. By GOMS.No.1380 Housing and Urban Development Department dated 21.10.198 0, the Community Development Wing in the CMDA was bifurcated and employees were transferred to the Tamil Nadu Housing Board and Tamil Nadu Slum Clearance Board.
By order dated 25.02.1981, the second respondent initially transferred the petitioner from CMDA to the TNHB with an assurance of all attending benefits. No service rules were framed either by CMDA or by TNHB at that time; only by GOMS.No.157 dated 01.03.1984, service rules were issued. The service of the petitioner was not regularised nor any promotion given to him. Amendment were carried out by CMDA on 30 .07.1988, in relation to the service of Community Development Wing as Special Regulations, by which three category of posts namely (a) Chief Community Development Officer, (b)Community Development Officer, and (c) Community Officer were created. Method of appointment to these categories have been prescribed; a revised scale of pay was also fixed. The category III namely the post of 'Community Officer' was considered to be the Feeder Category to the next higher post of ' Community Development Officer' which may be filled either by promotion or by deputation or by direct recruitment. The person holding the post of community officer for 5 years is eligible to be promoted as Community Development Officer. The petitioner completed five years of service in the year 1983. But, no promotion was given nor his service were regularised by the second respondent. Persons entered service much later to the petitioner in the CMDA were promoted to the next higher post. Hence, the petitioner filed W.P.No.3422 of 1989 for a writ of mandamus to direct the respondents to transfer the service of the petitioner to CMDA; The writ petition was disposed of by order dated 20.03.19 90 directing the Tamil Nadu Housing Board to retain the service of the petitioner and to regularise the same conferring all consequential benefits including the promotion. This order was passed on the representation made by the Housing Board that the service of the petitioner should be retained in the Housing Board. In the mean time, V-Pay Commission revised the scale of pay with effect from 01.06.1988, but that was not extended to the petitioner till 19.02.1991. Promotion was denied to the petitioner on the ground of want of vacancy due to the deputation of one T.S.Sundari. However, the petitioner was temporarily promoted to the next higher post of Community Development Officer on 14.02.1991. The persons equally placed as that of the petitioner in CMDA and doing the same nature of work are drawing higher scale of pay at Rs.1820-60-2300-75-3200. A request to pay the same salary was unjustly negatived. The Government in its order dated 07.02.1994, asserted that the duties and responsibilities of the post of Community Officer in TNHB and CMDA are different; but it is factually incorrect. Payment of lesser salary to the petitioner vis a vis those in CMDA is violative of Articles 14 and 16 of the Constitution of India.

3. In the counter filed by the respondents it is stated as follows:-
The petitioner was initially employed in CMDA as "Social Worker." Thereafter, the entire Community Wing in CMDA was transferred to TNHB and Slum Clearance Board for permanent absorption as Community Development Officer by GOMS.No.1380. The petitioner's service was regularised with effect from 28.02.1987f i.e., from the date of absorption in the Tamil Nadu Housing Board. Thereafter, the petitioner was promoted as Community Development Officer on

14.02.1991, in the scale of pay of Rs.1600-50-2300-60-2660, pending approval of the Government on the basis of the recommendation of the V-pay Commission. The CMDA adopted a higher scale for the same post at Rs.1820-60-2300-75-3200. Hence, the petitioner requested to fix higher pay as in the CMDA. This request was recommended to the Government and the Government rejected his claim by letter dated 07.02.1994, on the ground that the duties and responsibilities of the post of Community Development Officer in CMDA and TNHB are not the same.
Even though the petitioner is the regular employee as Community Development Officer in the Housing Board, his service were utilised for guiding the economically weaker sections of TNUDP allottees before the closure of TNUDP division. The petitioner's services were utilised for the work of sales of unsold units and his services were also been utilized as a coordinator for all sales schemes in respect of divisions of Chennai circle and necessary orders were issued to that effect. The post of Community Development Officer is still existing in TNHB, but service of the petitioner has been utilised for selling of unsold units. Hence, his request for revision of scale of pay on par with CMDA cannot be considered. If the CMDA is willing to take back the service of the petitioner, the Board will have no objection in sending the petitioner back to CMDA. In fact, CMDA sent another batch of Community Officers and deputed them to Slum Clearance Board and their pay is fixed under V-pay Commission as that of TNHB. Hence, the petitioner request cannot be considered as the service Rules of CMDA is different from TNHB.

4. In the counter filed by the first respondent, it is stated that the service of the petitioner was transferred by the Government to the Housing Board. Inasmuch as the petitioner was permanently absorbed in Tamil Nadu Housing Board as per GOMS.No.1380 dated 21.10.1980. His services are governed by the service regulation of Tamil Nadu Housing Board. The contention that had the petitioner continued in CMDA he would have been considered for further promotion in CMDA is not tenable. Pursuant to the order of the High court in the writ petition, he was promoted as Community Development Officer in the scale of pay of Rs.2200-75-2800-100-4000 on 14.02.1991. Tamil Nadu Housing Board adopts the pay structure with necessary modifications according to the pay commission scales. The pay for the post of Community Officer is only Rs.1600-50-2300, whereas the CMDA has adopted a higher scale of pay of Rs.1820-60-2300-75-2300. The CMDA and TNHB are not one and the same. The duties and responsibilities of the Community Officer working in TNHB is less onerous.

5. The learned counsel for the petitioner, Ms.R.Vaigai contended that the petitioner was appointed in CMDA and against his wish he was transferred to TNHB. When he wanted to go back to CMDA and filed a writ petition to that effect, the TNHB insisted that the service of the petitioner was required in the TNHB and hence refused to send him back to the parent department and also undertook to confer all the benefits. But, though the petitioner as Community Development Officer is discharging the very same duties and responsibilities which are discharged by the Community Development Officer in CMDA. The petitioner is paid a lesser pay even though he is senior to those who are absorbed subsequently in CMDA. Both CMDA and TNHB are two wings of the

Government and hence instrumentalities of the State. Under the circumstances, the pay cannot be different in two different wings of the very same Government. The learned counsel further pointed out that the duties and functions of the Community Development Officer in the Tamil Nadu Housing Board is not different from the duties and responsibilities of a Community Development Officer in CMDA.

6. The duties of the Community Development Officer in Tamil Nadu Housing Board (TNHB) and Chennai Metropolitan Development Authority (CMDA) are given here under:
TNHB
CMDA

The Community Officers in TNHB have to assist the EWS and LIC allottees of scheme areas and are attending to the grievance of the allottees. The Community Officer is responsible for the Community Welfare programme organised in scheme areas. He has to attend the liaison work with the agencies in implementing the TNUDP programme.

The Community Officer of this authority are responsible for the Community welfare programme organised in scheme areas. They are attending liaison work with various agencies in implementing the Madras Urban Development Projects and Tamil Nadu Urban Development Project programme. They are the allottees of schemes in redressing their grievances. They are guiding the allottees in getting housing loans and thereby improve the settler status in the scheme areas.
7. The learned counsel for the petitioner further contended that a perusal of these duties would show that there are no difference what so ever in the duties performed by these two. In fact, the Housing Board also recommended to give the same scale of pay as given in the CMDA. But the Government has rejected it for no valid reasons. On the principle equal pay for equal work, the petitioner is entitled to be given the same salary as in the CMDA.

8. In support of the contention, the learned counsel relied upon the decisions of the Supreme Court in National Museum Non-Gazetted Employees' Association and Another Vs. Union of India and Others (198 8 (Supp) Supreme Court Cases 673), where the Supreme Court has held the principle of equal pay for equal work was applicable to Gallery Attendants of the National Museum, New Delhi and the record attendants of the National Archives. The counsel also referred to another decision in Y.K.Mehta and others Vs. A.Kamal Batcha and Others (1988(Supp) Supreme Court Cases 750), in which case the Supreme Court has held that the staff Artistes of All India Radio and that of Doordarshan are not different and having regard to their service conditions they are held to be Government servants and they were directed to pay the same salary. The learned counsel for the petitioner submitted further that inasmuch as the post of Community Development Officer both in the TNHB and CMDA are one and the same the pay should also be the same. Therefore, the denial of equal pay amounts to violation of the principles equality guaranteed by the Constitution.

9. The learned counsel Mr.Veerasekaran, appearing for the Housing Board contended that the two organisations namely TNHB and CMDA are different. The employees of TNHB are Governed by the Rules and regulations of the TNHB. It is independent of each other and for pay structure, the rules of TNHB alone is material. That cannot be compared with CMDA; their functions and duties are different and pay parity with CMDA cannot be claimed by the petitioner who is placed the scale of pay fixed by TNHB. Therefore, the claim of the petitioner is not acceptable.

10. The main argument of the learned counsel for the petitioner is that the designation of the post in which the petitioner is working is the same in CMDA also; the pay scale in CMDA and TNHB are different, though both are the two wings of the Government. Therefore, the petitioner is entitled for the pay scale that is paid to the Community Officer in the service of the CMDA. The counsel mainly relies upon the decisions of the Supreme Court referred to above. The qualification prescribed for the Community Officers both in TNHB and CMDA are one and the same. But, in so far as their duties are concerned, the duties and responsibilities of the Community Officer in TNHB is different from that of the Community Officer in CMDA. In CMDA they are guiding the allottees in getting loans and thereby improve the status of the settlors in the scheme areas. It is stated that the Officers in TNHB are doing liaison work in implementing the TNEDP Programme. It is true that designation of the post 'Community Officer' in both wings are one and the same. It is also true that the Supreme Court granted equal pay to staff artist of All India Radio to that of staff artist in Doordarshan. Similarly the gallery attendants in the National Museum at New Delhi was equated with regard to the attendants of the National Archieves. But in the later decision, the Supreme Court has cautioned the Courts from passing orders in such matters.

11. In the case of State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association (2002 AIR SCW 2896), wherein in paragraph 1 0, the Supreme Court has held as follows:

"It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the farreaching consequences of a decision in the matter and its impact on the administration of the State Government Courts have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justifiable or that the Courts cannot entertain any proceeding against

such administrative decision taken by the Government. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking decision to reconsider the matter

and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same."

12. In another case in State Bank of India Vs. Mr.Ganesh reported in (2002(3) AIR SCW 2987), the Supreme Court has held in paragraph 17

as follows:
"The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The Principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court."

13. From a reading of the above two decisions, it is clear that Courts cannot pass orders to pay the scale of pay on the ground that nomenclature of the two posts are one and the same. Fixation of pay and determination of parity in duties and responsibilities is a complex matter and it is for the executive to discharge. In the counter affidavit, it is stated by the second respondent that the functions discharged by the petitioner is different from the functions discharged by the Community Officers working in CMDA. The prayer is to quash the letter dated 07.02.1994. In that letter it is stated the comparative statement furnished by the petitioner was

considered. The duties and responsibilities for the post of Community Officer in CMDA and TNHB are not one and the same. Even though the TNHB decides to bring in similarities in duties and responsibilities between the MMDA and TNHB, the duties and responsibilities in the case of TNHB are only less onerous. This is the statement of fact which the petitioner wants to quash.

14. As held by the Supreme Court in the Haryana case, in the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact and administration of the State Government Courts should not try to delve deep into the administrative decisions pertaining to pay fixation and pay parity. The court should approach such matter with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored the facts which are material and relevant for a decision in the matter.

15. Bearing this principle in mind, if the present case is considered, it is seen from the affidavit that the duties and functions of the Community officer in TNHB is different- it is not identical to that of Community Officer in CMDA. The statement made in the counter affidavit also has to be taken into account. When considered in the light of counter affidavit, and the letter issued by the Secretary to Government Housing Board dated 18.11.1992, it has to be concluded that the function of Community Officer in TNHB is not identical with that of Community Officer in CMDA. Further while granting pay parity it should also be taken into consideration the financial aspect of the department. So, when considered in the light of this factors, the prayer in the writ petition cannot be granted.

16. Only if Courts come to the conclusion that the state Government has failed to take into consideration the relevant factors which are unjust, this Court can direct the authorities to consider this aspect. There is no reason to hold that the Government has failed to consider all the relevant factors. This Court cannot go behind the letter dated 07.02.1994. Therefore, this Court cannot direct the respondent to consider the request.

17. The petitioner has been absorbed in the service of TNHB by order of this Court. The petitioner did not challenge that order and therefore he has accepted the absorption in TNHB. Once absorbed into the TNHB, the pay scale paid by the TNHB alone is applicable to the petitioner. He cannot now seek for a direction to repatriate the petitioner to the department in which he was originally appointed.

18. In the result, the writ petition fails and the same is dismissed. No costs.

Index:Yes
Internet:Yes

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To

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Pre-delivery Order
in
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